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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888

7590

07/30/2003

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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,12 and 15-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,12 and 15-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Arguments

1. In view of the appeal brief filed on May 19, 2003, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

WITHDRAWN REJECTIONS

2. The 35 U.S.C. 112 first paragraph rejection of Claims 1 – 2 and 5, 35 U.S.C. 112 second paragraph rejection of Claims 1 – 2, 5 – 7, 12 and 15 – 35 and 35 U.S.C. 102(b) rejection of Claims 1 – 2, 5 – 7, 12 and 15 – 35 as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235), of record on page 2 of the previous Action, are withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5 – 6, 12, 16 – 31 and 33 – 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al. (U.S. Patent No. 4,842,951).

With regard to Claims 1, 5 – 6, 12, 16 – 31 and 33 – 34, Yamada et al disclose a method for storing a flavored good (food product; column 1, lines 30 – 38) comprising providing a laminate having a non – platelet filled core barrier layer (gas permeation resistant resin layer; column 3, lines 21 – 28) sandwiched between an outer layer and at least one further layer (column 3, lines 21 – 28) the further layer being formed from a non – polar thermoplastic polyolefin resin filled with a platelet filler comprising talc (plate crystal; the polyolefin is polyethylene; column 3, lines 47 – 49, lines 57 – 61) the core barrier layer consisting essentially of a vapor impermeable non – polyolefin (polyvinylidene chloride; column 3, lines 29 – 44) and having a thickness less than 25 microns (column 3, lines 45 – 46), and storing a flavored good in a container formed from the laminate material such that the further layer of the non – polar thermoplastic polyolefin resin filled with talc extends between the flavored good and the core barrier layer (column 5, lines 27 – 31); the thickness of each layer is between 10 and 50 microns (column 3, lines 45 – 46; column 4, lines 44 – 46). With regard to the claimed aspect of the container reducing absorption of the flavoring, Yamada et al do not disclose absorption of the

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flavoring; the claimed aspect of storing the good being a method of reducing absorption of the flavoring (to zero) therefore reads on Yamada et al

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 7, 15, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. (U.S. Patent No. 4,842,951) in view of Branch (U.K. Patent No. 2295617).

Yamada et al disclose a container comprising talc as discussed above. Yamada et al fail to disclose a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30.

Branch teaches the use of a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 (page 5, second paragraph; page 6, third paragraph; Abstract) for the purpose of obtaining a container which provides a good oxygen barrier (page 3, third paragraph). The desirability of providing for a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Yamada et al, which is container having oxygen barrier, would therefore be obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a talc having a CIE whiteness of at least

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40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Yamada et al in order to obtain a container which provides a good oxygen barrier as taught by Branch.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson

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ALEXANDER S. THOMAS
PRIMARY EXAMINER